

REMARKS

Claims 17, 22, 26, 29, 31, and 34 are pending in the application. Favorable reconsideration in light of the remarks which follows is respectfully requested.

The Obviousness Rejection

Claims 17, 22, 26, 29, 31, and 34 stand rejected under 35 U.S.C. § 103(a) over Buttner-Janz (U.S. Patent 5,401,269) in view of Fuhrmann (U.S. Patent No. 5,002,576). Buttner-Janz and Fuhrmann relate to an intervertebral disc endoprosthesis.

The claimed intervertebral disk implant contains a cover plate and a base plate that have a declination of the corners facing each other away from each other. The cover plate has an articulating surface as indicated below in Fig. 10 of the subject application. Because of the declination of the corners, the cover plate does not contact the base plate in all of the possible movements. As a result, the edges of the cover plate and base plate would not be broken or abraded, thereby extend the lifetime of the intervertebral disk implant (See page 15, line 28-page 16, line 6 of the subject specification). To this end, independent claim 22 recites "**edges of a cover plate and of a base plate have a declination of corners *facing each other* away from each other and in all of possible movements the cover plate does not contact the base plate.**"

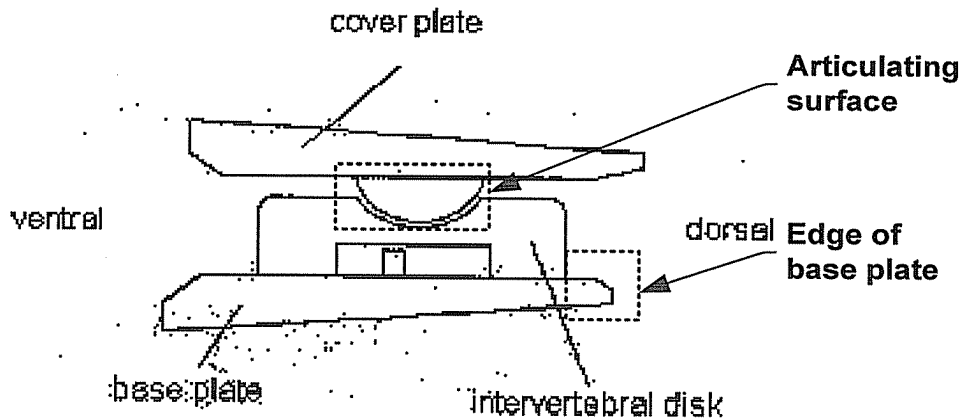


Fig. 10 of the subject application.

Buttner-Janz fails to teach or suggest that edges of a cover plate and of a base plate have a declination of corners facing each other away from each other and in all of possible movements the cover plate does not contact the base plate. The portion of Buttner-Janz's prosthesis plate (Fig. 12) which is referred to as "declination" on page 2 of the final Office Action is a portion of an articulating surface.

See Fig. 12 of Buttner-Janz below. While edges of a bottom plate and a top plate have a declination as indicated in Fig. 12 below, the declinations do not face each other away from each other and in all of the possible movements the top plate does not contact the bottom plate. Buttner-Janz teaches edges formed on the **outside surfaces** of the top and bottom plates. Buttner-Janz not only fails to teach or suggest the claimed cover plate and base plate, but Buttner-Janz in fact teaches away from the claim features.

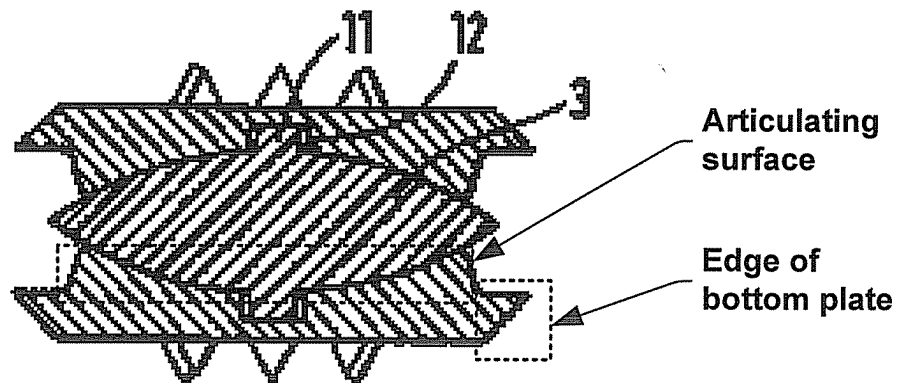


Fig. 12 of Buttner-Janz.

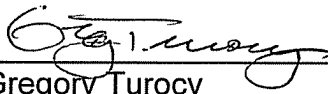
In Buttner-Janz, contact between the top plate and the bottom plate during bending movement is prevented by a collar 7 (column, 3 lines 14-19 and Fig. 2 of Buttner-Janz) or by a rib 11 (column, 4 lines 18-23 and Fig. 8 of Buttner-Janz). The collar 7 comes into contact with a rim 8 to prevent the contact between the top plate and the bottom plate. The rib 11 "strike[s] against the side walls of [a] groove 12" to prevent the contact between the top plate and the bottom plate (column 4, lines 10 and 11 of Buttner-Janz). Buttner-Janz teaches contacting other components of the prosthesis to prevent the contact between the top plate and the bottom plate. Contacting other components causes additional mechanical stress, and therefore the risk of damage to the plates caused by contact with each other is simply shifted to the other components. In contrast to Buttner-Janz, the cover plate of the claimed intervertebral disk implant does not contact the base plate in all of the possible movements because of the declination of the corners facing each other away from each other.

While the Examiner contends Fuhrmann teaches that upper and lower base plates can be coated with a ceramic coating, Fuhrmann fails to make up for the aforementioned deficiencies of Buttner-Janz. As a result, the proposed combination of Buttner-Janz and Fuhrmann fails to teach or suggest all the claim features. Accordingly, withdrawal of the rejection is respectfully requested.

Should the Examiner believe that a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

In the event any fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 50-1063.

Respectfully submitted,  
**TUROCZY & WATSON, LLP**

  
\_\_\_\_\_  
Gregory Turocy  
Reg. No. 36,952

57th Floor, Key Tower  
127 Public Square  
Cleveland, Ohio 44114  
(216) 696-8730  
Fax (216) 696-8731